

REMARKS

Claims 1-11 are pending in the present application. Claims 1 and 11 have been amended. Claims 7 and 10 have been cancelled. Claims 12-18 have been added.

Claim 11 has been amended in the form of an independent claim. New claims 12-18 are dependent therefrom. Claim 11 now defines that the lower layer comprises an alumina, and the upper layer comprises a zirconium complex oxide supporting rhodium and platinum thereon, a cerium complex oxide supporting platinum thereon and an alumina supporting platinum thereon. Claim 11 further defines that palladium is supported only on the alumina of the lower layer.

Claims 1-11 are rejected under 35 USC § 102(a) as being anticipated by EP 1,053,779A1 (“the ‘779 patent”). Claims 1-11 are rejected under 35 USC § 103(a) as being unpatentable over EP 1,013,334A1 (“the ‘334 patent”). Claims 1-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending application Serial No. 09/902,570.

Rejection of Claims 1-11 under 35 USC § 102(a)

Claims 1-11 are rejected under 35 USC § 102(a) as being anticipated by EP 1,053,779A1 (“the ‘779 patent”). This rejection is respectfully traversed. Embodiment 6 of the ‘779 patent corresponds to Example 3 of the present application. This composition comprises the lower layer where palladium is supported on the cerium complex oxide. Claims 1 and 11, as amended, now define the catalyst composition of the present application comprising the lower layer wherein palladium is supported only on alumina (this composition corresponds to Example 1 and Example 6 of the present application). The ‘779

patent fails to disclose or suggest the composition as recited in amended Claims 1 or 11 of the present application.

As can be seen in TABLE 1 of the present application, the composition of Example 3 (i.e., Embodiment 6 in the '779 patent) differs from that of Example 1 in that palladium is supported only on the alumina of the lower layer in Example 1 while palladium is supported only on the cerium complex oxide in Example 3. This difference results in difference in performance of the CO-NO_x cross-point purifying rate. That is, Example 1 demonstrates higher rate (96%) compared to Example 3 (94%) despite the same amount (4.0g/L-cat) of noble metals are supported in both Example 1 and Example 3. Thus, the amended claims differ in their composition from the composition in the '779 patent.

Rejection of Claims 1-11 under 35 USC § 103(a)

Claims 1-11 are rejected under 35 USC § 103(a) as being unpatentable over EP 1,013,334A1 ("the '334 patent"). This rejection is respectfully traversed. The Examiner's position is that the instant invention is obvious from the composition teachings found in the '334 patent. However, in the composition of the '334 patent, the noble metals are merely supported on the zirconium complex oxide. In other words, the '334 patent does not disclose or suggest the combination of the upper layer having a specific composition and the lower layer having a specific composition, as recited in the present invention. Since the '334 patent fails to disclose or suggest the composition as recited in amended Claims 1 and 11, the present invention would not be obvious from the composition teachings found in the '334 patent.

**Provisional Rejection Under Judicially Created Doctrine
of Obviousness-Type Double Patenting**

Claims 1-11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-10 of copending application Serial No. 09/902,570. As a result of the amendments herein, the pending claims, as well as the added claims, are distinguishable over Claims 1-10 of application Serial No. 09/902,570 to overcome the rejection. The undersigned representative respectfully requests that the Examiner withdraw this rejection. If the Examiner does not find the amended claims to be distinguishable over the copending application, the undersigned representative reserves the right to later address the provisional double patenting rejection once the claims are allowed over the referenced art.

CONCLUSION

Should the Examiner determine that any further action is necessary to place this application into better form for allowance, the Examiner is encouraged to telephone the undersigned representative at the number listed below. No further fees are believed due, however, if there are any fees due, please charge to deposit account No. 501458.

Respectfully submitted,

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